IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6.7.2006

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

C.M.A.No.471 of 1999

1. The Managing Director,
   Zoological Park, Vandalur,
   60, Ist Avenue, Sastri Nagar,
   Chennai-20.

2. The Chief Secretary,
   Government of Tamil Nadu,
   Chennai-9. .. Appellants/2 & 3 Respondents

vs.

1. S.Kalyana Raman
2. Kesavan
3. The Managing Director,
   Tamil Nadu Forest Plantations Corpn. Ltd.,
   Trichy-18. .. Respondents 1 to 4/Petitioners

Civil Miscellaneous Appeal against the award and decree dated 27.3.1997 in M.C.O.P.No.332 of 1989 on the file of the Motor Accidents Claims Tribunal (3rd Judge, Small Causes Court), Chennai.

For appellants : Mr.M.Rangarajulu, Govt. Advocate.
For respondents: Mr.A.K.Venkatesan for R-1
RR2 and 3 NA

JUDGMENT

The appeal has been filed against the award and decree dated 27.3.1997 in M.C.O.P.No.332 of 1989 on the file of the Motor Accidents Claims Tribunal (3rd Judge, Small Causes Court), Chennai.

2. The appeal has been filed by the Managing Director, Zoological Park, Vandalur and the Chief Secretary, Government of TamilNadu. The first respondent herein is the claimant before the Tribunal.

3. The first respondent/claimant was working as Liaison Officer, M/s.Combine Engineering Industries and Agencies (P) Ltd., Defence Colony Road, Chennai-16. It was stated in the claim petition that the claimant was aged 44 years and earning Rs.2,500/- per month. In the course of his employment, on 8.3.1985, the first respondent was returning home from Ambattur in a motor-vehicle bearing Registration No.TMF-9801 and while proceeding on the New Avadi Road near ICF Annexe, the vehicle driven by the first respondent/claimant

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was hit by a Car bearing Registration No.TNY-5320 belonging to the Managing Director of the Vandalur Zoological Park, which was driven by it's driver Mr.Kesavan. According to the first respondent-claimant, the car belonging to the first appellant turned to the right side without signal to enter the ICF Annexe Road and while doing so, the vehicle of the first appellant dashed against the vehicle of the first respondent/claimant and due to such accident, the first respondent suffered the following injuries: right hip fracture, right thigh bone fracture, right knee cap fracture and right knee compound injury. The first respondent/claimant was rushed to General Hospital by the public and after treatment for certain period of time, he was discharged and treated in private hospital. A police complaint was lodged. The first respondent filed a claim petition under Section 166 of the Motor Vehicles Act before the Tribunal, claiming a total compensation of Rs.3,70,000/-.

4. Before the Tribunal, the claimant examined himself as P.W.1. The Police Officer in-charge of the traffic investigation who spoke about the FIR and the accident, was examined as P.W.2. P.W.3 is the Doctor who examined the claimant. The following documents were filed on behalf of the claim petition: Ex.P-1 series are the documents relating to medical treatment undertaken by the claimant at Isabel Hospital. Ex.P-2 series are the proof relating to medical treatment given to the claimant by Padmini Nursing Home. Ex.P-3 is the salary certificate. Ex.P-4 is the copy of the FIR. Ex.P-5 is the sketch of the accident-site and Ex.P-6 is the disability certificate.

5. On behalf of the appellants herein, the driver of the car was examined as R.W.1 and the proceedings of the Criminal Court which ended in acquittal was marked as Ex.R-1.

6. The Tribunal, taking into consideration the plea of the claimant that the car of the first appellant was driven in a rash and negligent manner by its driver Kesavan, came to the conclusion that the car which was involved in the accident, had turned right into the ICF Annexe Road without proper signal or caution and therefore, collided with the two-wheeler driven by the first respondent/claimant who was admittedly proceeding on the main road. While arriving at such conclusion, the Tribunal relied on the sketch drawn by the investigating officer and the FIR. The Tribunal rejected the plea of the appellants that the driver of the car was not responsible for the accident, which plea was taken based on the judgment of the Criminal Court acquitting the car driver. The Tribunal was of the view that inspite of the fact that the Criminal Court had acquitted the driver of the car in the alleged offence of rash and negligent driving, based on the FIR and the sketch and other connected documents and evidence, the driver of the car cannot be exonerated of his negligence merely because the proceedings of the Criminal Court are in favour of the driver of the appellant. It held that the judgment of the criminal court was not binding on the Tribunal.

7. Learned counsel for the first respondent-claimant would rely upon a decision of this Court reported in 2004 (2) TN MAC 101 (N.Sathidevi & Others vs. V.Giridharan & another) to state that the

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evidence before the Criminal Court cannot form the sole basis for deciding the liability in a case before the Motor Accidents Claims Tribunal deciding a claim petition. In the said decision, this Court, while deciding the issue, took into consideration the following decisions of the Rajasthan High Court and the Calcutta High Court and held in paragraphs 14 and 15 as follows:

> "14. While considering the binding force of the acquittal of a driver in the Criminal Court on the Tribunal while deciding the claim for compensation, the learned Judge of the Rajasthan High Court has held in Smt.Prem Kanwar and Others v. Rajasthan State Roadways Corporation and Another, AIR 1987 Rajasthan 146, as follows:
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> > "From the above discussion of evidence, I find that there is sufficient evidence to support the case of the claimants that Sanwant Singh died on 25.4.1979 on account of accident made by a Roadways Bus No.R.R.M.1460 which was being driven by Madan Singh. The mere fact that Madan Singh was acquitted in criminal case is of no avail as far as the present case is concerned because in a criminal case the prosecution has to prove beyond reasonable doubt and the burden always rests on the prosecution, whereas in matters of compensation, it is the preponderance of evidence which decides the matter. Finding of a Criminal Court cannot be binding on a Civil Court and in this connection, reference may be made, to Mrs.Pushpa v. State of Jammu and Kashmir, 1977 ACJ 375 : AIR 1977 NOC 277 (J & K).
>
> 15. The same view was taken by the Division Bench of the Calcutta High Court in Banya Sarkar v. Sipra Guha Roy and Another, 1992 ACJ 572. They have held as follows:
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> > "In our view it was not necessary on the part of the Claims Tribunal to take into consideration the police report and the deposition recorded by the police. The accused may be discharged or acquitted in a criminal case but that does not show that the accident did not take place or that cannot have any repercussion on the finding of the Claims Tribunal on the basis of the evidence and documents on record. The standard of proof in a Criminal Court and Civil Court is not the same. In the instant case the

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appellant failed to prove the fact that the said bus did not travel the area where the accident took place as per the stand taken."

8. Having come to such a conclusion, the Tribunal held that the driver of the vehicle belonging to the first appellant was responsible for the accident in question and fixed the liability on the appellants.

9. A fervent plea was made by learned Government Advocate appearing for the appellants that the Criminal Court had found that there was no negligence on the part of the driver of the appellants and he was exonerated in the criminal case. Therefore, in the absence of any other material, the liability ought not to have been fixed on the appellants. This contention of the learned Government Advocate is required to be rejected on the ground that the finding of the Tribunal while determining the negligence is based not only on the proceedings of the Criminal Court, but also on the various documents filed, namely FIR, the evidence of P.W.2, the Police Officer in-charge of the traffic investigation, Ex.P-5, sketch of the accident site, etc., to come to the conclusion that by the nature of the accident, the driver of the appellants was responsible for the accident. That apart, even as per the admitted pleadings, the claimant was travelling on the main road and the driver of the car turned right at the junction to go to another road. The driver of the car ought to have waited for the two-wheeler to pass-by completely before turning right. The driver of the car apparently did not take proper care or caution to allow the two-wheeler to pass-by. In such circumstances only, the present accident had happened. Therefore, the finding of the Tribunal is correct. The Tribunal has taken into consideration the oral evidence and the sketch of the accident site and the FIR to come to such conclusion and has rightly rejected the findings of the criminal court based on the aforesaid documents and materials. There is no material to come to a different conclusion from that of the Tribunal on the question of negligence.

10. As regards the quantum of compensation, taking into consideration the age of the injured and the nature of injuries suffered by the first respondent-claimant, the Tribunal awarded the total compensation at Rs.2,13,000/- under various heads as follows:

Loss of income	: Rs.15,000/-
Extra-nourishment	: Rs.3,000/-
Medical expenses	: Rs.75,000/-
Attendant salary	: Rs.5,000/-
Shock, anxiety and mental agony	: Rs.5,000/-
Loss of amenities	: Rs.10,000/-
Pain and suffering	: Rs.10,000/-
Disability	: Rs.45,000/-
Loss of earning power	: Rs.45,000/-

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11. The next ground urged in this appeal is that there was no proof that there is loss of earning power and therefore, the Tribunal

erred in passing the award for a sum of Rs.45,000/- for the loss of earning power as against the claim of Rs.1,50,000/-. It is stated that as regards the disability of 45%, a sum of Rs.45,000/- has been granted and therefore, there is no justification for granting further amount for "loss of earning power".

12. Learned counsel for the first respondent/claimant is not able to state on what basis the claim for "loss of earning power" has been made. It was pleaded by the first respondent that the amount towards loss of amenities granted by the Tribunal is grossly inadequate and the pain and suffering is continuing throughout the lifetime of the first respondent and therefore, paltry sum of Rs.10,000/- each given under the two heads - loss of amenities and pain and suffering, should be modified in the event of this Court interfering with the award of the Tribunal.

13. The question of awarding compensation on the basis of the disability and loss of earning power based on such disability depends on the facts and circumstances of each cases and debatable. In a given case, the disability may be of such that the victim having suffered the disability, will be incapable of making a living as before like in the case of tailor, driver, a daily wage earning coolie, typist and the like, who are totally dependant on their physical ability to make a living. Therefore, the question of granting compensation on the head of loss of earning power when once an award is granted for disability, depends on facts and circumstances of each case. It cannot be said that such claim is not maintainable when the legislation speaks about just and equitable compensation.

14. In so far as the present case is concerned, on going through the award of the Tribunal, it is clear that for the disability of 45%, a sum of Rs.45,000/- has been awarded by the Tribunal, however, in the absence of a specific pleading to support a claim on the head of loss of earning power, there is no justification for granting further amount of Rs.45,000/- for loss of earning power. The award of the Tribunal on this account is not correct. Accordingly, the award of the Tribunal under the head "loss of earning power" at Rs.45,000/- is set aside.

15. Further, it is pleaded that the scar of injury, pain and suffering continues throughout his lifetime. The claimant has suffered grievous injuries as stated by the doctor in his evidence. Therefore, it will be just and equitable that the loss of amenities and pain and suffering undergone by the claimant should be adequately compensated. Hence, the amount of Rs.10,000/- each granted under the two heads--loss of amenities and pain and suffering, is modified and a further sum of Rs.10,000/- each under the said two heads, is awarded, i.e. to say, loss of amenities - Rs.20,000/- and pain and suffering undergone - Rs.20,000/-. The interest as awarded by the Tribunal is confirmed. The award of the Tribunal on the other heads, is confirmed.

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16. The first respondent-claimant is entitled to get a total

compensation of Rs.1,88,000/- (Rupees one lakh and eighty eight thousand only) with interest at 12% per annum from the date of claim petition till the date of deposit.

17. The award of the Tribunal is modified to the extent indicated above. The appeal is allowed in part. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1) The Motor Accidents Claims Tribunal
(3rd Judge, Small Causes Court), Chennai.

2) The Section Officer, VR Section, High Court,
Madras.

1 CC TO ADDL. GOVT. PLEADER (CS) SR NO 29159

1 CC TO MR.A.K. VENKATESAN, ADVOCATE SR NO 29162

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